| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/475,765 | 12/30/1999 | ERIC HAMER | KEYNP005 | 6830 |

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RITTER, LANG & KAPLAN
12930 SARATOGA AE. SUITE D1
SARATOGA, CA   95070

| EXAMINER |
|---|
| NGUYEN, PHUOC H |

| ART UNIT | PAPER NUMBER |
|---|---|
| 2143 | |

DATE MAILED: 02/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on _amendment filed on July 13, 2004_.
2a)☐ This action is **FINAL**.     2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) _1,3-21,23-30,38 and 39_ is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) _1,3-21,23-30,38 and 39_ is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All   b)☐ Some * c)☐ None of:
    1.☐ Certified copies of the priority documents have been received.
    2.☐ Certified copies of the priority documents have been received in Application No. _____.
    3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**
1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.
4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____.

## DETAILED ACTION

### *Response to Amendment*

1.      This office action is in response to the amendment filed on.  Amendment filed on July 13,

2004 have been entered and made of record.  Claims 1,3-21, and 23-30, and 38-39 are presented

for further consideration and examination.

### *Response to Arguments*

2.      Applicant's arguments with respect to claims 1, and 20 have been considered but are

moot in view of the new ground(s) of rejection.

### *Claim Rejections - 35 USC § 103*

3.      The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains.  Patentability shall not be negatived by the
> manner in which the invention was made.

4.      Claims 1,3,5-7,10,12-21,23-26,29-30, and 38-39 rejected under 35 U.S.C. 103(a) as being

unpatentable over Forman et al. (Hereafter, Forman) U.S. Patent 6,178,449 in view of Sweet et

al. (Hereafter, Sweet) U.S. Patent 6,519,714.

5.      Referring to claims 1, and 20, Forman reference discloses sending a request for

information to the information source (Figure 4, servers 410,420, and 430) from a data

acquisition agent (Figure 4, client transaction time agent (460) connected to the network

(Abstract; Figure 4; col. 3, lines 19-22); loading data responsive to the request for information

onto the data acquisition agent from the information source (eg. agent collect response time from

request send to server; Figures 4, and 5; col. 5, lines 29-31); continuing the transaction between

the information source and the data acquisition agent, the user machine not the data acquisition

agent, and the information source, and collecting performance measurements by the data

acquisition agent for the transaction (Figure 5; and col. 10, lines 16-19); and sending the

performance measurements to a storage device (col. 10, lines 30-35); however, Forman fails to

teach continuing the transaction between the information source and the data acquisition agent

by simulating a transaction previously recorded by a user machine.

Sweet discloses a method for generating and executing the simulate transaction

previously recorded (col. 2 lines 43-58; col. 4 2nd and 4th paragraph).

It would have been obvious to one of the ordinary skill in the art at the time of the

invention was made to incorporate the simulating transaction technique from Sweet's teaching

into Forman's method to provide more effectively for evaluating the network performance in

addition it provides no disruption to the normal operation of the network.

6.      Referring to claim 3, Forman reference discloses collecting performance measurement

comprises collecting download time of the data in response to the request for information (Figure

5).

7.      Referring to claims 5, and 26, Forman reference discloses collecting performance

measurements comprises identifying errors (eg. Time-out) occurring during the transaction (

Figure 5).

8.      Referring to claim 6, Forman reference discloses the network is the Internet (col. 5, lines

14-22).

9.      Referring to claim 7, Forman reference discloses the information source is a web server

and the request for information comprises requesting a web page (client communicates with

server via http; col. 5, lines 14-21).

10.     Referring to claim 10, Forman reference discloses connecting a data acquisition agent to

the network comprises connecting a plurality of data acquisition agents to the network at a

plurality of locations (col. 4, lines 59 through col. 5, 1$^{st}$ paragraph).

11.     Referring to claims 12, and 13, Forman reference discloses continuing the transaction

comprises sending a query from and submitting an order the data acquisition agent to the

information source after the data is loaded (eg. transaction agent continue to measure and record

of transaction times occurs until the client instance is notifies transaction agent to end) (col. 10,

lines 16-28 and 43-48).

12.     Referring to claim 14, Forman reference discloses continuing the transaction comprises

updating state information to link web pages together within a transaction (Figure 7).

13.     Referring to claims 15, and 16, Forman reference discloses updating state information

comprises searching for a session ID, and searching for a text (col. 8, lines 47-64).

14.     Referring to claims 17-19, Forman reference discloses updating state information

comprises searching for a frame, URL, and HTML text (eg. updating the stats table) (figure 6).

15.     Referring to claim 21, Forman reference discloses the data acquisition agent includes a

browser embedded within the agent (col. 5, lines 14-21; and col. 8, lines 47-55).

16.     Referring to claims 23, and 24, Forman reference discloses the data acquisition agent is configured to receive said recorded transaction over the network, and instructions specifying a plurality of said recorded transactions to execute (Figure 7; and col. 10, lines 16-61).

17.     Referring to claim 25, Forman reference discloses the data acquisition agent is configured to repeat execution of said specified transactions until new instructions are received (col. 9, lines 32-38)

18.     Referring claims 29, and 30, Forman reference discloses a monitoring device for recording when the agent last executed the transaction, and the agent is operable to store the collected performance measurements (col. 10, lines 30-35).

19.     Referring to claims 38, and 39, Forman reference discloses connecting the data acquisition agent to the network, and the data acquisition agent interacts with the information source with a browser (Figure 4; and col. 5, lines 14-21, and col. 8, lines 47-55).


20.     Claims 4,8-9,11, and 27-28 rejected under 35 U.S.C. 103(a) as being unpatentable over Forman and Sweet further in view of Killian U.S. Patent 6,438,592.

21.     Referring to claims 4,8,9,11,27, and 28, Forman and Sweet reference disclose the information source is a web server and the request for information comprises requesting a web page. However, Forman and Sweet fail to teach the collecting performance measurements comprises collecting download time and number of bytes for each web page and individual components within each of the web pages downloaded during the transaction, and displaying the performance measurements on a web site.

Killian reference discloses the collecting performance measurements comprises collecting download time and number of bytes for each web page and individual components within each of the web pages downloaded during the transaction, and displaying the performance measurements on a web site (col. 3, lines 47-63; and col. 9, lines 12-35).

It would have been obvious to one of the ordinary skill in the art at the time of the invention was made to incorporate Killian's teaching into Forman's method to collect download time for each web page and individual components within each web page, and displaying the performance measurements on a web site, so the user can determine how much of a web page's slow download time is cause by which component objects, and locate such performance problem quicker.

### *Conclusion*

22.     The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**Sweet et al. U.S. Patent 6,836,800**

**Nesbitt et al. U.S. Patent 6,418,544**

**Reichman U.S. Patent 6,738,813**

**Kalkunte U.S. Patent 6,249,886**

**Datta et al. U.S. Patent 6,209,033**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuoc H. Nguyen whose telephone number is 571-272-3919. The examiner can normally be reached on Mon -Thu (7AM-4: 30PM) and off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, David A Wiley can be reached on 571-272-3923. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Phuoc H. Nguyen
Examiner
Art Unit 2143

February 9, 2005

DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100